

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

75-7457

To be argued by
HAROLD E. KOHN

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

JAMES MORRISSEY,
Plaintiff-Appellant-Appellee,

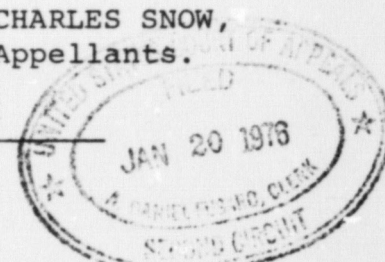
vs.

NATIONAL MARITIME UNION OF AMERICA,
Defendant-Appellant-Appellee,

and

JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW,
Defendants-Appellants.

REPLY BRIEF FOR APPELLANT
JOSEPH CURRAN



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80

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT	1
CONCLUSION	3

STATUTE CITED

	<u>Page</u>
Landrum-Griffin Act 29 U.S.C. § 411(a)	2, 3

ARGUMENT

The statement of "Facts" contained in the brief for Appellee James Morrissey ("Morrissey") is both replete with statements unsubstantiated in the record, and devoid of facts relevant to this appeal. Rather than addressing the legal and factual issues presented, the Morrissey brief represents an attempt to persuade this Court that speech protected by the United States Constitution and the federal labor law may be substituted for evidence that a cause of action has been proved.

Moreover, the Morrissey brief contains significant factual misstatements. For example, the statement at page 10 of the Morrissey brief that: "He [Appellant Joseph Curran ("Curran")] sent union counsel to support the charges..." is nowhere supported by the record. And while the Morrissey brief states at page 21n that: "Plaintiff would have preferred to have had both Curran and Snow at the trial", Morrissey did not join in the motion for adjournment. Also, the suggestion that a day was selected for removal of a malignant tumor for the purpose of frustrating a trial is absurd on its face.

In addition, the Morrissey brief demonstrates what may be charitably described as confusion regarding some of the legal issues presented in this appeal. At page 10 of that brief, Morrissey attempts to obfuscate the difference between acts done within the "scope of employment" and acts which are specifically "authorized." At page 29 of the Morrissey brief, no distinction is made between the "malice" required for malicious prosecution and the "malice" required for punitive damages. And the specious distinction made at page 14 of the Morrissey brief between acts inside and outside the hiring hall with regard to the duplication of the alleged violation of 29 U.S.C. §411(a)(5) and the claim for malicious prosecution falls apart completely as applied to Curran, who admittedly had no connection with the arrest.

There is no evidentiary basis for the judgment against Curran. Nor can Curran be punished for exercising the very right of free speech which Morrissey asserts as the basis of this action. Indeed, Morrissey has made no response whatever to the argument contained in the Supplemental

Brief On Behalf Of Defendant-Appellant Joseph Curran that the District Court erroneously permitted punitive damages to be based on Curran's speech which is protected under the Constitution and federal labor laws.

This action is based on 29 U.S.C. §§411(a)(2) and (5) and malicious prosecution. It is not a defamation action on behalf of Morrissey, or Senator McClellan. The evidence in this action does not support the judgment against Curran, and the exaggerated rhetoric which is commonplace in expressions regarding labor unions and their affairs cannot remedy that deficiency.

CONCLUSION

For the foregoing reasons, and the reasons set forth in the Core Brief and Supplemental Brief On Behalf Of Defendant-Appellant Joseph Curran, it is respectfully submitted that the Judgment below should be reversed, that Judgment N.O.V. should be granted to Defendant-Appellant

Joseph Curran, or, failing that, a new trial should be ordered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, CAROLE A. BRODERICK, hereby certify that
I caused to be served on all counsel of record this
19th day of January, 1976, the foregoing Reply Brief For
Appellant Joseph Curran, by placing the aforementioned in
the United States mail, postage prepaid, first-class mail.

Carole A. Broderick

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